

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Glen Posusta and Clint Herbst,

Complainants,

vs.

Bruce and Rhonda Thielen,

Respondents.

NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION

AND

NOTICE OF AND ORDER FOR  
EVIDENTIARY HEARING

**TO: Glen Posusta, 2330 Eastwood Cir., Monticello, MN 55362, Clint Herbst, 9801 Gillard Avenue NE, Monticello, MN 55362; and Alan Weinblatt, Weinblatt & Gaylord, PLC, 111 East Kellogg Blvd., Suite 300, St. Paul, MN 55101.**

On November 13, 2006, Glen Posusta and Clint Herbst filed a Complaint with the Office of Administrative Hearings alleging that Bruce and Rhonda Thielen violated Minn. Stat. § 211B.06 (false campaign material). After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth prima facie violations of Minn. Stat. § 211B.06.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter will be scheduled for a telephone prehearing conference and an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved

by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: November 15, 2006

/s/ Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge

### MEMORANDUM

The Complaint concerns a one-page flyer that was distributed anonymously in Monticello, Minnesota, just prior to the November 7, 2006, General Election. The flyer concerns Glen Posusta, who was an incumbent city council member running for re-election, and Clint Herbst, who was the incumbent mayor running for re-election. Mr. Herbst was re-elected mayor of Monticello, but Mr. Posusta lost his bid for re-election to the City Council to Susie Wojchowski and Brian Stumpf.

The Complainants allege that Bruce and Rhonda Thielen received a version of the flyer on or about October 15, 2006, from Susie Wojchowski. In addition, the Complainants attached to the Complaint the Probable Cause Order issued in *Posusta and Herbst v. Patch and Wojchowski*,<sup>[1]</sup> and highlighted the portion where the undersigned ALJ found, based on the sworn testimony of Ms. Wojchowski, that Rhonda Thielen asked Ms. Wojchowski for a copy of the flyer, that the Thielens left Ms. Wojchowski's home with the flyer, and that shortly thereafter Rhonda Thielen wrote a letter to the editor of the *Monticello Times* making reference to some of the allegations in the flyer.<sup>[2]</sup> The Complainant also attached to the Complaint a copy of Ms. Thielen's letter to the editor of the *Monticello Times*. The Administrative Law Judge finds that by alleging that the Respondents received the flyer and by referencing the Probable Cause Order and the letter to the editor of the *Monticello Times*, the Complainants have sufficiently alleged that the Respondents had some involvement in the flyer's preparation and distribution.

In reviewing the Complaint to determine whether it sets forth a prima facie violation of the statute, the Administrative Law Judge is required to credit as true all of

the facts that are alleged in the Complaint, provided that those facts are not patently false or inherently incredible. Apart from identifying Bruce and Rhonda Thielen as the Respondents, the Complaint contains the exact same claims that were alleged in the campaign practices matter of *Posusta and Herbst v. Patch and Wojchowski*, OAH Docket No. 3-6385-17601.

The Administrative Law Judge concludes the complainant sufficiently alleges that Bruce and Rhonda Thielen had some involvement in the preparation or distribution of the flyer. The Administrative Law Judge incorporates herein the Notice of Determination of Prima Facie Violation made in *Posusta and Herbst v. Patch and Wojchowski*, OAH Docket No. 3-6385-17601, which found prima facie violations with respect to certain statements contained in Bullet Point Nos. 2, 3, 7, 8, and 10. The remaining allegations are dismissed. This matter will be referred to the Chief Administrative Law Judge for consolidation with *Posusta and Herbst v. Patch and Wojchowski*, OAH Docket No. 3-6385-17601-CV, and scheduled for an evidentiary hearing before a panel of three Administrative Law Judges.

K.D.S.

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<sup>[1]</sup> OAH Docket No. 3-6385-17601-CV (Order dated November 6, 2006).

<sup>[2]</sup> *Id.* at 3.